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DR. NORM FAIOLA PH.D.

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EXAMINER

NGHIEM, MICHAEL P

ART UNIT

PAPER NUMBER

2861

DATE MAILED: 06/11/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/316,651

Applicant(s)

FAIOLA PH.D. ET AL.

Examiner

Michael P Nghiem

Art Unit

2861

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8-11, 13-19 and 21 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 5-7, 22, 26, 39 and 40 is/are rejected.
- 7) ☒ Claim(s) 3, 4, 12, 20, 23-25, 27-38, 41 and 42 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 May 1999 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other.

## DETAILED ACTION

### *Specification*

1. The disclosure is objected to because of the following informalities:

- "22" (page 11, line 14) and "22'" (page 11, line 16) should be -- 21" --.
- "18" (page 12, line 13) should be -- 38 --.
- after "bits" (page 13, line 2) should insert -- 56 --.
- "37" (page 15, line 4) is not a sensor element.
- "68" (page 19, line 13) should be -- 66 --.

Appropriate correction is required.

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

"Comprising" (line 4) is improper.

***Drawings***

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the flattened conductor housing (claim 41) must be shown or the feature(s) cancelled from the claim(s). No new matter should be entered.

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***Claim Objections***

4. Claims 12 and 20 are objected to because of the following informalities:

- claim 12, "en" (line 5) should be -- an --.
- claim 20, "a central transmitter" (line 8) should be -- said central transmitter --.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1, 2, and 5-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Swanson et al. (US 5,689,442).

Swanson et al. discloses all the claimed features of the invention including:

- a monitoring system (100) comprising:

- a sensing subsystem (12, 14, 16) having at least one sensing device (13) for generating at least one data stream (22); and

- a processing subsystem (10) for receiving and processing said data stream (Fig. 1), said processing subsystem including a memory (18), said processing subsystem adapted to encrypt said at least one data stream (via 72) to form an encrypted data stream corresponding to said at least one data stream (Fig. 1), and being further adapted to write said encrypted data stream to said memory (Fig. 1);

- said at least one data stream is a digital data bitstream (column 4, lines 14-16);

- said sensing subsystem includes a transmitter for transmitting said at least one data stream (14 transmits data to 22), and wherein said processing subsystem includes a receiver for receiving said at least one data stream (10 receives data from 22);

- said at least one sensing device includes a temperature sensor (16) and a battery (power supply to system), and wherein said at least one data stream includes data pertaining to said temperature sensor and data pertaining to a power level of said battery (column 4, lines 62-67);

- said processing subsystem is adapted to at least one of either date stamp or time stamp said data stream (column 6, lines 43-45).

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Claim 22 is rejected under 35 U.S.C. 102(b) as being anticipated by Schulling (US 5,044,914).

Schulling discloses all the claimed features of the invention including:

- a monitoring system (Figure) for monitoring food, said monitoring system comprising:

- a sensing subsystem (including 9) including at least one sensing device for generating at least one data stream (data to 12), said at least one sensing device adapted to be partially disposed in food of said at least one temperature controlled serving container (9 is disposed in contained food);

- a processing subsystem for receiving and processing said data stream (column 5, lines 4-8).

Claims 39 and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Goleman (US 4,028,688).

Goleman discloses all the claimed features of the invention including:

- a sensing apparatus (Fig. 1) for sensing characteristics of food stored in a plurality of food serving or storage containers (compartments of 12), said sensing apparatus comprising:

- a central transmitter (20, 36); and a plurality of probes 10, 34), each probe being adapted for partial disposal in one of said containers (disposed in 12), said each

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of said probes being hard-wired to a central transmitter adapted to transmit data from each of said plurality of probes (Fig. 1);

- a member (12) supporting at least one of said plurality of food storage containers;

- at least one conductor forming said hard-wire connection between said at least one of said probes and said transmitter (wiring between 10, 34 and 20, 36), said conductor being secured to said member so that said conductor is minimally obtrusive to a food service agent serving food (Fig. 1).

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schulling in view of Chiu et al. (US 5,575,563).

Schulling discloses the claimed features of the invention except for said at least one sensing device is provided by a probe having an elongated pin section and a temperature sensor disposed in said pin section.

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Nevertheless, Chiu et al. discloses at least one sensing device is provided by a probe (40) having an elongated pin section (Fig. 3) and a temperature sensor (43) disposed in said pin section (Fig. 3) for the purpose of sensing the temperature of an object contacted therewith (column 3, lines 53-55).

Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide Schulling with a probe as disclosed by Chiu et al. for the purpose of sensing the temperature of an object contacted therewith.

***Allowable Subject Matter***

7. Claims 3, 4, 23-25, 27-38, 41, and 42 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Claims 12 and 20 would be allowable if rewritten to overcome the objection(s) set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

9. Claims 8-11, 13-19, and 21 are allowed.



***Reasons For Allowance***

10. The combination as claimed wherein said processing subsystem is adapted to read said encrypted data from said memory, and to decrypt said encrypted data while reading said encrypted data (claims 3, 31) or said at least one sensing device is a probe device adapted for partial insertion into food (claims 4, 8) or said at least one data stream of said device includes data corresponding to said temperature sensor, and data corresponding to power level of said battery (claims 23, 25) or said processing subsystem is adapted to output on said display graphical indicia indicating both a temperature and a battery level associated with said at least one sensing device (claims 24) or said processing subsystem is adapted to at least one of either date stamp or time stamp said data stream (claim 27) or said processing subsystem includes a memory having an indexed hierarchical data storage structure, and wherein said processing subsystem is adapted to write said encrypted data stream to said hierarchical data storage structure (claims 28, 29) or said receiver is configured to encode said at least one data stream to create an encoded data stream, and wherein said processing subsystem is further adapted to decode said encoded data stream (claim 32) or said processing subsystem includes a display and a memory, wherein said processing system is adapted to output on said display graphical indicia indicating each of said sensing devices which is currently logging data (claims 34-36) or a central transmitter; and a plurality of probes, each probe being adapted for partial disposal in

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one of said containers, said each of said probes being hard-wired to a central transmitter (claim 37) or said at least one conductor secured to said member includes a flattened conductor housing (claim 41) or a sensing element, wherein at least one of said probes includes an elongated pin section housing for disposal in a food product, said elongated pin section substantially completely encapsulating said sensing element (claim 42) is not disclosed, suggested, or made obvious by the prior art of record.


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**Contact Information**

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Nghiem whose telephone number is (703) 306-3445. The examiner can normally be reached on M-F from 6:30AM – 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached at (703) 308-3126. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7724 for regular communications and (703) 308-5841 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

  
**MICHAEL NGHIEM**  
**PRIMARY EXAMINER**

Michael Nghiem

June 5, 2002